SPEECH

OF

HON. T. WENTWORTH, OF MASS.,

ON THE

KANSAS AND NEBRASKA QUESTION.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MAY 18, 1854.

The House being in the Committee of the Whole on the state of the Union—Mr. WENTWORTH, of Massachusetts, said:

I am well assured, Mr. Chairman, that the sentiments of the members of this committee are formed upon the question now before us for consideration. I have no doubt that gentlemen have determined upon the votes they shall give, and the course they shall pursue in reference to this measure, and that any further debate will be without effect upon the action of the committee; yet, sir, I cannot suffer this bill to come to a vote without giving some of the reasons which will determine my conduct in opposition to it.

No one can be more suprised than myself at meeting here at this session the slavery question for discussion. I am one of those who early thought it my duty to support the compromise measures of 1850, and to induce, so far as I had influence, my friends and neighbors to do the same. I aided, to the extent of my feeble powers, in rallying the Whigs of Massachusetts to the support of those measures; and I had the credulity to suppose that those measures were a finality on the question of slavery, so far as it affected any territory then in the possession of this Government. I, therefore, am exceedingly surprised to be compelled, after the assurances I had given to my constituents that it was settled, to meet it here so early in my congressional life.

But, Mr. Chairman, I have unwillingly come to the conclusion that slavery will not be still; that it is in its nature advancing and grasping; that it is alarmed at every stride of freemen; and that it is ever on the watch to secure to itself such powers and appliances as shall enable it to control, as it has heretofore done, the operations of this Government. I know that it is said, by gentlemen who support this bill, that this question should be taken from Congress; that it excites the public mind while here, and that by passing this measure on the principles avowed by its friends, and thus drawing the subject entirely from Congress, we shall give peace to the nation, and quiet that agitation which has subsisted at intervals during the whole history of the Government. But, sir, this is entirely delusive. Slavery is so connected with the politics of the Government, and with its industrial resources, that it must ever be a national question; one which is to be met, not at our firesides, not in our State Legislatures, but in the Halls of Congress; and whenever its relations to the Union are proposed to be changed, either by a restriction or an extension of its area,

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it is here that such change is to be considered, discussed, and determined. It has always been so from the foundation of the Government, and it will be so while the Union continues. We must make up our minds, then, whatever of disturbance or excitement it may produce, that here the question is to be met and settled; and if its discussion here should finally prove the ruin of the Government, still, if settled at all, it must be settled here, and nowhere else.

Our history shows that before the formation of the Constitution, the subject of slavery was one of the most disturbing questions which agitated the Government. It impeded the settlement of the Northwestern Territory until a compromise, excluding slavery from its limits, was finally agreed on, which has been the basis of all arrangements touching the territory acquired since that time. That compromise was to divide the territory between the free and slaveholding States, to apportion it as equitably as it could be done, making the Ohio river the line of division; and thus to let the two sections of the Union, the slave and the free, progress and move on together, each retaining its own institutions, and advancing side by side in fraternal affection. Such was the settlement agreed upon in Congress during the last days of the Confederation; a settlement which fixed the character, for the time, of all the territory belonging to the United States; and when the Constitution went into operation in 1789, the idea of the extension of slavery beyond the limits of the then Southern Territory was not entertained by any considerable portion of the Union north or south; but, on the other hand, an emancipation of the slaves, in some of the southern States, was confidently anticipated. The tendency of the Government was in the direction of freedom, and the hearts of the patriots of the Revolution beat only in that direction.

By the treaty with France, in 1803, we acquired the Louisiana Territory; and, in the progress of events, the question of slavery had to be settled in that territory. That portion of the territory comprising the present State of Louisiana, having slaves at the time of cession, was, in 1812, admitted as a slave State. In 1819 Missouri petitioned Congress for leave to form a constitution, preparatory to her admission into the Union. No definite action was had upon the petition. It was renewed in 1820, when the discussion of the principles upon which she should be admitted occupied for a long time the attention, not only of Congress, but of the country. That discussion terminated in an adjustment between the two conflicting sections of the Union. The claim of the South was, that the right to hold slaves should be conceded to the inhabitants throughout the whole extent of territory acquired under the treaty. The claim of the North was, that no part of the territory should have slaves except Louisiana, which had previously been admitted; and upon those two points the discussion was carried on in both Houses of Congress, until it finally ended in an adjustment to abandon the course of the Ohio river as the line of division between the slave and the free States; and inasmuch as Missouri had long been settled, and slaves existed there, the two parties should compromise; that the South should receive slave territory lying north of the mouth of the Ohio river, and that, as compensation for that, the line of 36° 30′, beginning south of the mouth of the Ohio river, should be the dividing line between freedom and slavery. In this settlement you will see that the line originally agreed upon was not adopted. Congress decided, in order to preserve the slave property already existing in the Territory of Missouri, that that State should be admitted into the Union with slavery in its constitution; but it was determined, as compensation for that, that the line between the free and slave portions of the remainder of the territory should commence south of the mouth of the Ohio river, and run due west to the western boundary of the territory.

It is now contended by the friends of the bill that this settlement is not binding upon the South; that it is a mere act of Congress, to which the North at the time did not assent, and that, therefore, the South is not bound by it. Sir, it is true that the North was dissatisfied with this settlement when made, and a majority of her members in both houses of Congress voted against it. But it is also true that it was a settlement of the conflicting claims of the two sections, and binding upon both parties. It was understood and agreed to be an adjustment of the whole question at the time, and that the line of demarkation should remain the boundary between the slave and non-slaveholding States to be made

out of the territory thus acquired. It is also said that this adjustment was unconstitutional; that Congress had no right to impose such a restriction upon the South, and that it ought now to be repealed; and the gentlemen who make this assertion are the successors of those southern men who agreed upon this principle of division, after a full discussion of the expediency and constitutionality of the measure, the South continuing in the enjoyment of all the benefits which she acquired under it to the present time. As evidence to show that, in the judgment of the South, this mode of dividing the after-acquired territory was both constitutional and expedient, we find the South, on the annexation of Texas, which was eminently a southern measure, adopting the principle of dividing that territory into free and slaveholding territory, and extending the same line through the territory so annexed. Nearly all the southern members in each House voted for this annexation and division, against a decided majority of the northern members. Again, in 1848 and in 1850, the southern vote and southern sentiment, so far as the latter could be ascertained, was nearly unanimous in favor of dividing the territory acquired from Mexico by the treaty of Gaudalupe Hidalgo into free and slave States, and offered, that the line of 36° 30′ should be extended to the Pacific to mark the division. After the South has peaceably enjoyed all the benefits of the settlement for thirty-four years, and so repeatedly and so solemnly recognised it by her votes in Congress, it is too late for her now to urge the unconstitutionality of the settlement. Honor, justice, and, above all, public faith, demand of her that she be silent upon the point. I will not attempt to argue it.

Another reason urged why the Missouri compromise line should be repealed is, that in 1821, when Missouri presented herself for admission into the Union, the North resisted her admission, and insisted she should modify her constitution, although it was in form republican. And, further, that a majority of northern votes were then for refusing her admission as a slave State. It is true that a majority of the North objected, in 1821, to her admission with the privilege of holding slaves. But it is also true that a majority of Congress, who alone could break the compromise, refused to sustain the objection. Her right to hold slaves was sustained, and, in that particular, no breach of the compromise took place. The North did object to a clause in her constitution excluding free negroes from the State, upon the ground that such persons were *citizens* in many of the States, and, by the Constitution of the United States, were entitled to the rights of citizens in Missouri. Congress sustained this objection, and proposed a mode of avoiding it, which being accepted by Missouri, she was admitted.

The Missouri compromise was an arragement in the form of a law, by Congress, that a line should be run on a parallel of 36° 30′ through the Louisiana Territory, and from that portion of the Territory lying above 36° 30′ (excepting that contained within the limits of the contemplated State of Missouri) slavery should be forever excluded, and that the State of Missouri should be admitted as a slave State, with the implied understanding that Congress would determine upon the fitness of her constitution when presented by her. Congress did so determine; and the State, having made her constitution conformable to the views of Congress, she was admitted, and the compromise became executed, and bound all parties. The legislation of Congress in 1820, in running the line through the Territory and allowing the State to form her constitution; and that of 1821, in admitting her into the Union, upon condition that she should make her constitution conform to that of the United States, were both necessary to the perfecting of the compromise, by reason of the mistake of Missouri in drafting her constitution. The statement of this proposition is enough to show that the legislation of Congress, at the instance of the North, instead of being a breach of the compromise, was, by the act of Missouri, made essential to its perfection.

This settlement disposed of the Louisiana Territory, which was all the country then possessed. The agreement by its terms embraced the Louisiana Territory, nothing more.

In 1848, an attempt was made in Congress to divide the territory acquired by the treaty of Gaudalupe Hidalgo, in February, 1848, embracing California,

New Mexico, and Utah, the South still adhering to the constitutionality of a division. The attempt failed.

In 1850, California, without authority from Congress, formed a constitution excluding slavery, and applied for admission into the Union, the South resisting the application, the North supporting it. The South then, as before, agreeing to the principle of dividing the territory between the free and the slave States, again offered the line of 36° 30'. The North would not agree to the line, and upon two grounds. First, that California had fixed her southern boundary below the parallel of 36° 30' north latitude, and the North would not consent to cut a sovereign State, already grown to an important position, into two parts. Second, that the line of 36° 30' ought no longer to be deemed by Congress a proper division, in consideration of the great amount of territory lying upon our southern boundary, the annexation of which to our territory was even then anticipated; and I ought also to add, that then, as formerly, the North was decidedly opposed to the extension of slavery.

The refusal of the North to accept the line of 36° 30', under these circumstances, is now claimed by the friends of the bill to be a breach of the Missouri compromise. The answer is apparent, and, to my mind, conclusive. The North never agreed or intimated that she would extend the line beyond the limits of the Louisiana purchase. She was unwilling to take it even when confined to that limit. When the South, aided by northern votes, succeeded in extending the line through Texas, the North did not agree that it should be extended farther on that parallel; she opposed its extension then. Neither did Congress, either by declaration or otherwise, pledge itself to the extension of this line. If Congress can be considered pledged to anything in this matter, it is to a fair and just division of new territory, when acquired, between the free and the slave-holding sections of the Union. That has been the practice of Congress, although it is evidently against the early policy of the Government, and is the consequence of yielding to an inordinate thirst for territory. Certain it is, that nothing beyond this can be claimed. The North has made no agreement upon the subject, nor can she be said to have waived her rights. She has resisted every settlement save that disposing of the Northwestern Territory; to that she assented, in common with the whole country.

But the favorite ground upon which the repeal of the Missouri compromise is demanded, is its alleged inconsistency with the compromise of 1850. What was the compromise of 1850? So far as it bears upon this question, it was the passage of laws admitting the State of California into the Union, with a constitution excluding slavery from the State, and forming temporary local governments for Utah and New Mexico, with provision that the States to be formed out of the two Territories should come into the Union, with or without slavery as their constitution might prescribe. The compromise of 1850, then, was the admission into the Union of a free State and the permission that slavery (if desired) might be introduced into the States to be formed out of the two Territories, which, with California, embraced all that was acquired from Mexico.

The compromise of 1820, so far as the territory above 36° 30' is concerned, admitted into the Union one slave State, and excluded slavery from the remainder of the territory. The compromise of 1820 did not extend the then existing lines between the free and slave States, to wit: the line of the Ohio river, which is very near the thirty-seventh degree of north latitude. But it allowed a slave State to ascend to about 40° 20', and made compensation therefor to the North by fixing the dividing line between the free and slave States on the parallel of 36° 30'—the South gaining about three degrees and twenty minutes of territory, besides the advantage of a location to that extent on the Mississippi river. The North acquired the larger amount of territory for free States, and the dividing line was located about half a degree south of the Ohio river. The compromise of 1850 did not extend the then existing line of 36° 30' between the free and the slave States, but it allowed a free State to descend to about 33° 30' of north latitude, and made compensation therefor to the South by fixing the dividing line between the free and slave territory on the forty-second parellel of north latitude. In this the South received the larger amount of territory, and an extension for slavery of 4° 30' of latitude.

The North acquired the location upon the Pacific, and an extension of free territory south, of about three degrees.

In the Missouri compromise slavery gained a State north of the line, and made compensation; in that of 1850 freedom gained a State, situated partly south of line, and made compensation. The principle of both settlements is the same; the facts only differ. I am not, sir, defending the justice of either of the compromises, but simply stating the principle involved in both. They have been made by Congress as final settlements of the slavery question upon the Territory to which they apply. They are judged at the North to be too favorable to the South; and in that judgment I concur. As they are made, they should be supported. But if the South pulls down that of 1820, she cannot expect the North to support that of 1850. They must stand or fall together.

I have thus, sir, endeavored to show that the principles of the legislation of the Missouri compromise, so far from being inconsistent with that of 1850, is in exact accordance with it; and gentlemen who have argued differently have not taken into consideration that the legislation of 1850, in relation to the Territories of New Mexico and Utah, was framed as a set-off to the admission of a free State, whilst that of 1820, in relation to the Territories of Kansas and Nebraska, was agreed to as a set-off to the admission of a slave State.

In all these adjustments, Mr. Chairman, I maintain that the South has been fairly dealt with by the North, notwithstanding it is now said we attempted to break the Missouri compromise in 1821; and although our action then is urged as a reason for its present repeal, still I maintain that the opposition to the admission of Missouri in 1821 was a proper and just act on the part of the North. Missouri had, by her constitution, excluded free negroes from her territory. The Constitution of the United States provided that the citizens of each State should be entitled to all privileges and immunities of citizens in the several States. Free negroes were citizens of some of the northern States, and the North objected to their exclusion from the State of Missouri, and claimed their rights as guarantied by the Federal Constitution, and insisted that, previous to the admission of Missouri into the Union, she should conform her constitution to that of the United States; and when that was done, in the mode pointed out by Congress, Missouri came into the Union.

Now, Mr. Chairman, gentlemen may look on the record to ascertain how this section of the country voted, and how that section voted. They may find that a majority of the South voted for the Missouri compromise, and a majority of the North opposed it. All this proves nothing. Congress, representing the whole country, and acting for the whole country, decreed its existence under circumstances that make it irrepealable; and it has affirmed and confirmed the same compromise at several periods, and whenever it has been called to legislate concerning it. And we see that it is now a subsisting law of agreement and compromise between the two sections of the Union; and it should be adhered to, and must be adhered to, if the South intends to keep faith with the North.

Mr. Chairman, in the course of this debate, members of the committee have deemed it proper to arraign the State of Massachusetts for her opposition to the Missouri compromise, and to charge her with being false to her history in the attitude which she has assumed to this bill. It is true, sir, that in 1821 the representatives of Massachusetts, in common with a majority of the House of Representatives, did object to the admission of the State of Missouri into the Union, except upon the "condition that the fourth clause of the twenty-sixth section of the third article of the constitution submitted by said State to Congress shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity therewith, by which any citizen of either of the States in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States." And the gentleman from New Hampshire (Mr. HIBBARD) charges her with inconsistency for this proceeding, and adds:

"At the same time there was a law in force upon her statute book providing as follows: 'That no person being an African or negro, (other than a subject of the Emperor of Morocco, or a citizen of some one of the United States, to be evidenced by a certificate from the Secretary of the State of which he shall be a

citizen,) shall tarry within this Commonwealth for a longer time than two months; and in case that the said African or negro (after notice) shall not depart, he shall be committed to the house of correction to be *kept to hard labor* until the next sessions of the peace; and if, upon trial, it shall appear that the said person has thus continued in the Commonwealth, he or *she* shall be *whipped* ten stripes, and ordered to depart out of the Commonwealth within ten days; and if he or *she* shall not so depart, the same process shall be had, and punishment inflicted, and so *toties quoties*.'

"What a commentary this upon pharisaical philanthropy. Massachusetts votes to reject Missouri from the Union, unless she will amend the provision of her constitution excluding free negroes from her borders; while, at that very time, she has a law in force for whipping every free negro out of the State, who should tarry there for the space of three months! The laws of every slaveholding State in the Union will be searched in vain for so barbarous an enactment. At the same time, and until 1834, there was in force in the same State a law empowering the civil authorities, in certain localities, to bind out all adult Indians and mulattoes, and take their earnings for life. What a case for the application of the scriptural maxim—'first cast the beam out of thine own eye, and then shalt thou see clearly to cast the mote out of thy brother's eye.'"

Sir, the law the gentleman has cited, does not sustain the charge he makes, and leaves his commentary upon the conduct of the State entirely pointless. Its history is this: Massachusetts ratified the Federal Constitution in February, 1788. This instrument, as is well known, provided for the abolition of the slave trade, and also contained a clause for the delivery up of persons held to service or labor under the laws of any State, who might escape into another. The constitution of Massachusetts, adopted in 1780, abolished whatever of nominal slavery existed there at that time, for it is well known that slaves did, by suit, recover their freedom from the restraint of their owners as early as 1770. The first constitution of New Hampshire, which went into operation in 1784, did not abolish slavery in that State, but it continued there as late as 1792, as it also did to a later period in the States south of Massachusetts. The consequence was, that slaves, dissatisfied with their master, or desirous of obtaining their liberty, escaped into Massachusetts, and roaming about without employment, sought support of the towns in which they finally settled.

The contributions of New England to sustain the revolutionary war had brought great distress upon its people; and a consequent revolt, which threatened the stability of the State government, had but just been suppressed in Massachusetts. Under this state of things, to relieve her towns from the charge of supporting these idle vagrants, and to deprive the disaffected portion of her citizens of recruits for another rebellion, and to conform her legislation to the position she was about to assume as a member of the Federal Union in reference to that clause in the Constitution of the United States which required the restoration of fugitives from service, Massachusetts passed the act which the gentleman has cited. And on the same day she passed an act abolishing the slave trade, punishing all persons in any way employed therein, and making void contracts of insurance upon any vessel engaged in the trade. And, in the same act, she provided additional remedy to any friend of a person who might be decoyed away or carried off from the State with a view of being sold into slavery.

The effect of this legislation was, on the one hand, to protect every "inhabitant or resident," of what color soever he might be, from being decoyed into slavery, and, on the other, to remove from the State all persons of color who were wandering within her borders, not citizens of some one of the United States, or a subject of the Emperor of Morocco. Of the propriety or necessity of this law, passed near seventy years since, we are hardly competent to judge. Since then we have advanced from weakness to strength, and our legislation has been growing milder as we have advanced in prosperity. Could we fully comprehend the anxiety and distress which pervaded the States immediately previous to the adoption of the Federal Constitution, we might conclude that the law which the gentleman has dug up from the rubbish of the past, was in its day, judicious and necessary. It can be said, in its favor, that it was passed by the legislature of a State that was at the time irrevocably committed to the cause

of freedom, without distinction of color or caste, and that it was approved by John Hancock. But, sir, waiving further discussion upon the history or necessity of the law, I turn to the point of the inconsistency of Massachusetts in claiming that Missouri should allow the privilege of citizens to the colored citizens of other States, as asserted by the gentleman from New Hampshire; and I maintain that the act he has cited, and the one I have referred to, both show that Massachusetts acknowledged the right to citizenship of negroes in other States, and that she jealously guarded their rights within her own borders. Having, then, within her territory negroes who were citizens of her State, her representatives would have betrayed the high trust reposed in them had they failed in 1821 to demand from Missouri the privileges and immunities guaranteed to them by the Constitution of the United States. In passing from this part of the gentleman's charge against Massachusetts, I will add, that the general terms in which the statute is drawn, omitting the word slave, was probably suggested by the care shown to exclude that word from the Federal Constitution; but that it was intended to apply to fugitives slaves alone, I refer to the following extract of a letter from Dr. Belknap to Judge Tucker, of Virginia, written in 1795 in answer to one making inquiries concerning the working of emancipation in Massachusetts, in view of a similar movement contemplated in Virginia:

"By a law made at the same time with the prohibition act of 1788, all negroes not citizens of any State in the Union, but resident here, are required to depart in two months, or they may be apprended, whipped, and ordered to depart. The process may be renewed every two months. The design of this law is to prevent deserting negroes from resorting hither in hopes to obtain freedom, and then being thrown as a dead weight on this community."

But the gentleman goes further in his attack upon Massachusetts. Not content with alleging the inconsistency of her conduct upon the admission of Missouri in 1821, he charges her with inhumanity in the management of a few Indians and mulattoes, the remains of those few ancient tribes now residing within her borders. His allegation is, that in 1821, "and until 1834, there was in force, in this same State, a law empowering the civil authorities, in certain localities, to bind out all adult Indians and mulattoes, *and take their earnings for life.*"

Mr. Chairman, the gentleman is entirely mistaken. Massachusetts never had such a law on her statute-book as the one he attributes to her in regard to the Indian tribes. I have been enabled to examine her statutes as far back as 1700, and feel confident in asserting that the gentleman has been misled. The few Indians in Massachusetts are the owners of the land upon which they reside, and their title to the same was acknowledged by the Provincial Legislature in 1633, and at the same time it was declared that no person should henceforth buy any land of an Indian without license from the Legislature. This policy, with a single exception, has been adhered to. As early as 1693 commissioners were appointed with the powers of justices of the peace, to have the general care and superintendence over them, in order to protect them from being defrauded or imposed upon by the whites; and this superintendence has been exercised by the State by means of commissioners, overseers, or guardians, to the present time. A reference to all the acts upon the subject will show the extreme care taken by the State to preserve their property, to improve their morals, promote education and religion among them, and, in particular, to regulate and control their contracts so that no injustice might be done to them; and the officers having this superintendency were required to make annual reports to the Legislature of their doings—the object appearing in all the acts to create a domestic tribunal to settle, as far as might be, all dealings between themselves, or between the Indians and the whites; no action being allowed to be brought either for or against an Indian without the consent of the guardians.

Mr. HIBBARD. The question is one of construction. Will the gentleman read a part of the law of 1789?

Mr. WENTWORTH. Certainly. I will read what the gentleman refers to. The first section declares:

"That the overseers are hereby vested with full power and authority to re-

gulate the police of the said plantation; to establish rules and regulations for the well ordering and managing the affairs, interest, and concerns of the said Indians, and other proprietors and inhabitants, as well with respect to the improvement and leasing out of their lands and tenements, regulating their streams, ponds, and fisheries, perambulating their lines, and meting out lots for their particular improvement, as with respect to their bargains, contracts, wages, and other dealings; and to take due care of their poor, and that their children be bound out to suitable persons of sober life and conversation."

The second section authorizes the overseers or guardians to collect the debts due the Indians, to sue for them, and to settle and adjust all their controversies, and to bind by indenture the children of the poor to suitable persons of sober life and conversation.

Another section makes it the duty of the overseer to divide all money received by them for rents and contracts "among the Indians, according to their respective rights, dues, and shares."

This is the statute upon which, I understand, the gentleman relies to prove the assertion that Massachusetts had upon her statutes, till 1834, a law authorizing her to bind out adult *Indians and mulattoes for life and take their earnings.*

Sir, the law confers no such power. It is an ample grant of authority in order to protect the rights of these unfortunate people from encroachment by the whites, but the power over their personal liberty is confined to that of binding out the children of the poor. Their authority being the same as is usually confided in the New England States, to overseers of the poor in towns over white children who have become chargeable to the public for support. There is not one word said about controlling the personal liberty of the adults; and instead of taking the earnings of the Indians for life, the fourth section of the act provides that "all rents and profits arising from their lands, tenements, and fisheries," and "all money, wages, or incomes" which may be received by the overseers, shall be distributed among the Indians according to their "respective rights, dues, and shares;" a proceeding entirely incompatible with the perpetual apprenticeship to which the gentleman insists the Indians were subjected.

So far from empowering the overseers to bind out the Indians for life, the Provincial Legislature, as early as 1700, passed an act making void all contracts made by the Indians, binding themselves or their children as a servant or apprentice for a term of years, except with the allowance of two justices of the peace, "who are required to take special care that the contract or covenant so to be made, and the conditions or terms thereof, be equal and reasonable both with respect to the time of service and otherwise." And by the same act the general sessions of the peace were "empowered, upon complaint made by any Indian native of this country" aggrieved by any "agreement before made for any time or term of service not yet expired, to hear and relieve such Indian according to justice and equity, and to regulate and order the term for such service as they shall judge reasonable."

In 1819, in order to encourage the Indians to industry, the Legislature passed an act of which the following is the fifth section:

"The real estate acquired by the industry of the proprietors and members aforesaid, (meaning the Indians and mulattoes of Marshpei and Herring Pond,) and purchased by them, shall be the sole and separate property and estate of such proprietor or member so acquiring and purchasing the same, and may be by him or her enjoyed, sold, alienated, or disposed of by deed, will, or otherwise."

This is the only departure from the provincial policy established in 1633, forbidding any sales to be made by them.

The fourth section of the same act provided:

"That the overseers shall have power to bind out to service, for any length of time not exceeding three years, any proprietor or member aforesaid, who, in the judgment of said overseers, has become a *habitual drunkard and idler;* and the earnings of such person in such service to receive and apply to his or her maintenance and support, or to the support of his or her family, or to the

support of the said proprietors generally, as the overseers, in their discretion may think proper."

This act, sir, is the first authority conferred upon the overseers to bind out an adult Indian, and this authority is to be exercised only after the said adult shall have been adjudged by them guilty of the crime of habitual drunkenness and idleness. This punishment, instead of a committal to the house of correction for six months, (which might be imposed upon a white citizen for the like offence,) is to be bound out to service, according to the section quoted above.

It will be seen, without the aid of argument, that if the overseers possessed the power of binding out the Indians for life, at their pleasure, that there could be no necessity of conferring upon them the power to do so for three years, as a punishment for crime. The Legislature of the State knew well what authority it had conferred upon the overseers by its previous and then existing laws, and preferring that the misdemeanor referred to should be punished by the overseers rather than in the ordinary courts of law; it gave to them, as the existing tribunal for the government of the Indians, the cognizance of that offence. At the same time it repealed all laws inconsistent with the act it was then passing.

Sir, under the constitution of Massachusetts, no man, white or colored, can be deprived of his liberty or estate but by the judgment of his peers or the law of the land; and no man residing there, unless he be a fugitive, and claimable under some law or treaty of the United States, can be exiled, or placed in involuntary servitude, unless for crime of which he has been proved guilty. Our constitution throws its ægis over every man residing within the State; and all persons of twenty-one years of age, who have committed no crime, are free under that constitution, and subject to no other's will. I know that in some States the law is different. I know that in the gentleman's own State the law is different. I know that poverty there will subject a man to be bound out by the overseers of the poor. I know that the State of New Hampshire so interprets her constitution, so legislates, and so acts. But it is not so in Massachusetts. An adult in Massachusetts may be punished for crime, and restrained of his liberty; but it cannot be done except by the judgment of a court.

The gentleman from New Hampshire says that there is no more barbarous code to be found in the slaveholding States than is to be found among the laws of Massachusetts. I do not know how that may be. It is unpleasant for me, Mr. Chairman, to be called upon to enter into a defence here of the laws of Massachusetts, or to make comparison between them and the laws of her neighbors, for I know such proceeding must be uninteresting to the committee. But as the gentleman has seen fit to refer to the legislation of Massachusetts, I propose to refer to an act of cotemporary legislation upon the part of New Hampshire, without intending any disrespect to that State, but merely to show that it would be quite as well for gentlemen to attend to the concerns of their own States before interfering with those of their neighbors. I will state the substance of an act which passed the Legislature of New Hampshire nine years after the passage of the negro law to which the gentleman refers. It is entitled "an act in addition to the laws of the State respecting *paupers;*" and it provides that any person not being a citizen of that State who shall be of vicious character, or without any visible means of support, shall be warned out by the town authorities where he may happen to be; and if he does not depart within fourteen days, he is then to be taken before a magistrate, and upon his order if he does not depart within ten days, he is subjected to be publicly whipped, not exceeding ten stripes. And a similar punishment was awarded to its own citizens, who, having been once removed under the law from a town in which they have no settlement, should voluntarily return again and remain seven days. This New Hampshire law was, as I have said, passed nine years after that of Massachusetts, which the gentleman has commented upon, and which he thinks is more barbarous than any enactment that can be found in any of the slaveholding States. The Massachusetts law, it should be remembered, was a law for suppressing and punishing rogues, vagabonds, common beggars, and other idle, dissolute, and lewd persons. The New Hampshire act was one respecting the poor. Taking into consideration the purposes for which the respective laws were passed, I will decline searching among the enactments of

the slaveholding States for a law similar to that passed by Massachusetts, but will submit to the gentleman himself the comparative barbarity of the law of his own State and mine.

I say again, sir, that I do not refer to this law with a view of reflecting upon the general character of the laws of New Hampshire. I regard the State too highly to make any reflection upon her history. I know that in general her laws are similar to those of her sister States; and although of late we hear of anti-republican restrictions in her constitution, I do not forget that it was made in accordance with the ideas of the last century, and that the State has prospered and is well governed under the practical construction which has been given to it. But, under the circumstances of the case, I shall take the liberty to advise my friend to purchase an old volume of the laws of his State, to take with him as a traveling companion; and when he feels particularly desirous to arraign the legislation of any of her sister States, I recommend him to recur to its pages, and learn there that humility which its readings will not fail to teach.

Leaving what he deems the obnoxious statutes of Massachusetts, and lingering on his way to pay his respects to Great Britain, the gentleman, following high example set him elsewhere, next commences an attack upon the clergymen of New England, because in common with their fellow-citizens they have remonstrated against the passage of this bill, and, in a style and manner well calculated to produce an effect, he proceeds to interrogate them:

"Who, sir, has ordained this new union of church and State, with these gentlemen for judges and arbiters of political affairs? Who gave them their high commission? Who intrusted to their hands the judgments of the Almighty, to launch at discretion upon the objects of their displeasure?

> 'To deal damnation round the land
> On each they deem his foe!'

Who sent them into the political arena as a class, to bandy epithets of partisan warfare in the name of the Most High—to apply such terms to a measure which the tenor of their manifesto shows they did not understand, and which, perchance, no one of them had ever read?"

Sir, I deem the remonstrance of the New England clergymen, in every sense, a proper paper to be presented to the Congress of the United States. The gentleman concedes to them the privileges of freemen, and as such, they have an undoubted right to petition in favor of, or remonstrate against, any measure pending before us: and, in doing so, to use such language as they deem proper. I should qualify this by adding the word respectful, did not the character and calling of these remonstrants make such qualification unnecessary and inappropriately particular.

Sir, these men, holding the opinions upon slavery common to New England, have constituted themselves of their own authority and in their own right not "judges" nor "arbiters" of this question, but petitioners at your bar, asking you to preserve, as free territory to them and their posterity, that domain which has already been dedicated to freedom; asking you above all things to preserve inviolate the plighted faith of the nation, and not to allow our history to bear the disgrace which will attach to it if we suffer this unnecessary, uncalled for, and, as they doubtless believe, *unholy* measure to become a law. I am far from believing that these gentlemen will "forfeit" any "public respect" by the course they have taken. They are honest and consistent men. They hold to the opinions now which the Legislatures of the free States, New Hampshire included, held and openly declared in 1848. They thought the legislative opinions then expressed upon this subject were right, sound, and truthful. If politicians have since changed, they have not. And whatever else the gentleman may deny them, he will not fail to award them that rare merit of these times, CONSISTENCY.

Sir, these gentlemen have no ambitious hopes to gratify. They fear that Congress is about to pass a measure that will disturb the peace, and, possibly, the security of the country; they believe the measure cannot be adopted without the committal of a great national wrong; they hold it to be uncalled for, and in itself unjust and injurious to the true interests of the country; they be-

lieve the crisis to be one in which they are called upon to use the weight and authority of their names in this public manner. I honor their motives, and most unqualifiedly approve their conduct. Many of these gentlemen are my constituents. They will not expect any commendation from me here. They are beyond it. All that I need add is, that they are worthy successors of those men who, in the darkest hours of our country's peril, unawed by power, and unbought by patronage, unflinchingly preached that "RESISTANCE TO TYRANTS IS DUTY TO GOD."

The honorable gentleman from Kentucky, (Mr. BRECKINRIDGE,) seeing in the opposition to this bill what he deems a counterpart of the principles which Lord North avowed in the government of the Colonies before the revolutionary war, declaims against the "despotism of the Missouri restriction," and intimates that New England is turning her back on the doctrines that marked her early history; and that Boston is betraying "the principles that made her own origin illustrious." I tell the honorable gentleman that New England stands to-day where she stood in 1770, contending for the liberty of the human race, and for the maintenance of such institutions as will "preserve the blessings of liberty to us and to our posterity;" that she stands upon the Declaration of Independence, and asks that the legislation of this Government shall not be false to the principles upon which it is based. I am not insensible to the compliment implied in his remarks to Boston; but I must tell him that the inhabitants of that city know well the history of their ancestors. They understand the principles of that struggle in which she was the first to enter, and they can well appreciate the importance of a contest that involved the slavery or the freedom of an empire. They appreciate it now, and they will be found where their fathers were, battling for freedom, against either tyranny or slavery propagandism. And if Kentucky, forgetful of the precepts of Henry Clay, shall be found in the ranks of those who are desiring to extend the area of human slavery, unmindful of the national pledges, Massachusetts, adhering to the doctrines for which she was the first to shed her blood, will continue her support to freedom, confidently expecting that, under other and better auspices, Kentucky will again range herself with her old and tried ally, in support of the principles upon which the Constitution was formed, and upon which only it can be maintained.

Mr. Chairman, as the doctrine of non-intervention asserted in support of this bill is claimed by its friends to be the true principle upon which territorial government shall be established, it may be well to inquire how that doctrine is understood in reference to this measure; for before we are called upon to sanction by our votes any particular doctrine, we ought at least to understand what that doctrine is, and how it is taught by its professors. Recurring to the report of the Committee on Territories of the Senate, who reported the bill from which has grown the substitute before us, we find that non-intervention means non-intervention with the *law of the Territory* when the territorial government is proposed to be established; and that under this existing law and the Constitution, and laws of Congress, the Territorial Legislature shall be authorized to legislate for the protection and necessities of its immediate constituents. This is understood to be the principle of the Utah and New Mexico bills. It is true that the laws of those Territories were, at the time of their admission, differently expounded—northern gentlemen holding that they excluded slavery, and many southern gentlemen denying it. But the acts of Congress establishing the Territories left the law in force, and disturbed no rights, either of property or freedom, existing at the date of the treaty of cession. But such is not the principle of this bill. By the terms of its enactment it sweeps away the existing law of the Territory, and with labored particularity divests it of every vestige of law or custom; and I do not know but it would be correct to add, of every tradition to which reference might be had in the settlement of any judicial controversy. This is termed non-intervention, making what we have been so often told a *tabula rasa* of the whole Territory, so far as its local law is concerned.

The principle of the bill before us is then directly at variance with the legislation of 1850, that left in the Territories the local law in full force, interfering with no existing law or custom; whilst this bill, framed for a similar purpose, and defended as being identical in principle sweeps, with one blow, all law and

custom from the Territory. It is certainly drawing largely upon our credulity for the friends of this measure to ask the North to support it, on the ground that it is within the compromises of 1850. But what is the effect of non-intervention with territorial legislation, acting under the laws of Congress, with power "to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States?" We all know that upon this question the country is as much divided as it is upon the propriety of slavery itself; and that, notwithstanding this debate has continued four months, the public mind is no nearer being settled upon this point than it was at its commencement.

I understand the southern argument to be, that, under the Constitution, slavery is, at the time of acquisition, extended into the Territories, and that any attempt at exclusion, whether by Congress or by the Territorial Legislature, is an unconstitutional interference with the right of slaveholders to carry their slaves into the Territories and to hold them there, without reference to any local law existing at the time of acquisition. This doctrine assumes, not that the sovereignty over the Territories resides in the people thereof, but that the Constitution of the United States (in which gentlemen holding these opinions see the power to protect and extend slavery) abrogates all law inconsistent with the slavery of the negro. The argument denies the right of Congress to prohibit slavery in the Territories, and of course it follows that if Congress has not the power to prohibit slavery from being carried into a Territory, it cannot confer upon a Territorial Legislature the power to prohibit it; and in accordance with this idea an amendment that "the people of the Territory, through their appropriate representatives, may, if they see fit, prohibit the existence of slavery therein," has been voted down by the friends of the bill. If the South, by the aid of northern votes, (and she cannot without them,) succeeds in establishing this doctrine as a principle for future legislation, or should it succeed in passing this bill, we may expect to see this doctrine assumed by her as a principle established by Congress, and to witness her future efforts to apply it to every territorial government hereafter to be formed. This bill embraces all the unorganized territories of the United States, and proposes to intervene with two slave States between the free States east and those that are destined to exist west of the Rocky Mountains. In addition to this acquisition to slavery, there lies upon our southern border the Republic of Mexico, hardly held together by its present Government, and in a fitting condition to be purchased, or conquered, as party exigencies may demand. That the remainder of Mexico is destined to be annexed to the United States is already regarded as certain. And that such an event would revive the slavery agitation is equally certain. Up to 1850, and including the settlement of that year, the principle adopted in the disposition of territory acquired by the United States has been that of a division between the free and the slaveholding States. The claim now put forth by the South repudiates that principle, and demands the whole. Freedom has outgrown slavery. The extending march of the freeman excites alarm and apprehension. Liberty and education have ascended the Rocky Mountains, and turning southward, have almost reached the thirty-second parallel of north latitude. There is danger that these blessings will spread wider and wider, and diffuse themselves with a rapidity too active for slavery. This progress must be checked, or the time may arrive when the necessity of looking to a change in the condition of the colored population can no longer be avoided. Hence the desire to establish the doctrine that the Territorial Legislatures may determine at the outset that slavery may be admitted into the Territories. Under the southern doctrine of the force and effect of the United States Constitution operating upon the Territories, such legislation is not absolutely essential; but there are many sound men at the South (a majority, I trust) who ascribe no such powers to that instrument, and therefore it becomes necessary to attain the end by legislation, and to give a practical construction to the Constitution in advance of contemplated acquisitions. If I am right in supposing that Mexico is to be annexed to us, and if it be true that interested persons are seeking an opportunity to embroil us with Spain, in order to afford a pretext for a descent on Cuba; if, in addition to this, and for this, the attempt is now being made to establish the doctrine that slaves may lawfully be taken into any

territory, now or hereafter to be possessed by us, what a spectacle do we present to the civilized world? A nation starting into life upon the declaration "that all men are born free and equal, and that they are endowed with the inalienable rights of life, liberty, and the pursuit of happiness;" and having sustained this declaration by arms, and established a Government upon principles of perfect freedom and equality, should, ere that Government had existed seventy years, assume an attitude of conquest and dominion, with the avowed design (if we may trust the exponents of southern opinion) of extending and perpetuating a system of human slavery over whatever of territory it may acquire; and this is to be done, if we may trust the same exponents, (I mean the southern press,) in order to preserve and maintain that control in this Government that the South has hitherto enjoyed.

Sir, I deny this southern doctrine altogether; and, on the contrary, I maintain that the Constitution of the United States carries slavery nowhere and protects it nowhere. Wherever it exists, it exists by local law; and whatever of protection it obtains, is derived from the same source. The Constitution does, indeed, provide for the return of a fugitive from service to the master from whom he escaped; but it imposes bondage upon no one. The Constitution does not determine the condition of any person in a Territory at the moment of its annexation. The local laws remain in force until Congress shall legislate upon the subject; and such laws are subject to alteration by Congress only, or by such territorial government as Congress, consistently with the Constitution, may ordain and establish.

Mr. Chairman, this bill, instead of being in accordance with any previous legislation, is an entire departure from all previous action of the Government touching the territorial and slavery questions. My friend and colleague, (Mr. UPHAM,) in his able exposition of the history of these questions, has shown how vital was the settlement of the slavery question in framing a government for the Northwestern Territory by the Confederation, and the intimate and close connection of that settlement with the adjustment of the representative basis, and the provision for the return of fugitives from service, as inserted in the Federal Constitution. The facts and circumstances cited by him would seem to prove the entire correctness of his position, that the provision for the return of fugitive slaves was regarded and received as an equivalent for the restraint imposed upon the extension of slavery. But if the position be denied, still the history of the national legislation shows conclusively that, upon every acquisition of territory, Congress has proceeded upon the principle of dividing the territory, so that it might be enjoyed in just proportions by the citizens of the free and of slaveholding States. The present bill demands the whole for slavery, and thus not only overthrows the legislation of 1850, but all other legislation upon the same subject which has preceded it.

We see, sir, that non-intervention must be set down as an invention devised for the exclusive benefit of our southern friends, and the only compensation paid to the North for it, is the pretended recognition of popular sovreignty alleged to be contained in the bill. It seems to be pretty well understood that under the operation of this doctrine the South is to get the land to whatever extent we may push our purchases or conquests in a southern direction; and I will devote a minute or two in examining this doctrine of popular sovereignty, which is offered to the North as an equivalent for allowing the unlimited extension of slavery over all future territorial acquisitions; to ascertain if the great doctrine "that the people shall govern" is anywhere to be found in the bill. I maintain that it is not. I further maintain that, under the Constitution, Congress *must* keep the control of the territorial government, which in every particular holds its powers from the United States, and not from the people of the Territories; and that the people, if they can be said to exercise any political power in the Territory, do so, not in virtue of any sovereignty inherent in them, but by virtue of a direct grant contained in the bill.

A slight examination will be sufficient to show the correctness of these positions, and to prove that whilst popular sovereignty cannot be conferred upon the people of the Territories by Congress, that the bill does not assume so to confer it. Before examining this question, it would be well to inquire into the relation in which the General Government stands to the Territories. And first,

the United States are the unquestioned owners of the land comprised within their limits; and the treaty by which the territory was acquired provides:

"The inhabitants of the ceded territory shall *be incorporated in the Union of the United States*, and admitted, as soon as possible, according to the principles of the Federal Constitution, *to the enjoyment of all the rights, advantages, and immunities of citizens of the United States*; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, *property*, and the religion which they profess."

The trust under which the United States holds the territory is to admit it into the Union (of course as States) according to the principles of the Constitution, yielding to the inhabitants the rights, advantages, and immunities of citizens of the United States, and, in the mean time, protecting them in the enjoyment of their liberty, property, and religion. The treaty then supposes that until the Territory is admitted into the Union as a State, it is under the care, maintenance, and protection of the General Government, and it expressly devolves upon Congress the sole duty of providing for the protection of the inhabitants of the Territory until it shall be admitted into the Union; and Congress cannot absolve itself from this duty without a breach of good faith to France, nor can it do so under the Constitution of the United States, which provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." All will agree that Congress, and Congress alone, must execute the powers conferred upon it by the Constitution. It is clear that all the territory that has at any time been owned by the General Government has been held by it in trust to be admitted into the Union as independent States with a republican form of government. Congress has executed this trust by providing temporary local governments, with certain prescribed powers, in general conformity with the main provisions of the bill before us. And now, who creates this government, what are its powers, and to whom is it responsible? Congress creates it, maintains it, and has the power at any and at all times to limit or enlarge its powers, or to destroy it altogether. To go a little into detail. We create every department of the Government, provide for the appointment, by the President and Senate, of the Governor, secretary, three judges, a marshal, and an attorney. We prescribe their qualifications and duties, fix their residence and their salaries, and we determine the number of the Council and of the House of Representatives, prescribe the place of residence of the members thereof, and limit the duration of their sessions. We ordain that all official bonds are to be given to the United States, and that the official correspondence of the Governor is to be sent semi-annually to the President, and the laws of the Territory to each House of Congress. To all this we add, that the whole expenses of the government is to paid by the United States, and that the Governor and secretary, in the disbursements of money, are to be governed solely by the instructions of the Secretary of the Treasury of the United States, and that no expenditures shall be made by the Assembly for objects not specially authorized by the acts of Congress making the appropriation, nor beyond the sums thus appropriated for such objects.

In addition to this, it will be seen by the bill that Congress confers the executive powers, as therein enumerated, upon the Governor, the legislative power upon the assembly, as well as the judicial power upon the judges. Thus, every department of the government proposed to be established is created, and its powers conferred, by Congress; and the only mention of the people or the inhabitants of the Territory, in connexion with the departments of government, is the giving them a right to choose the members of the assembly.

If this be a correct enumeration of the provisions of this bill, how can it be said to establish popular sovereignty in the people of the Territory? The sole power or duty confided to them is to elect the members of the assembly. That executed, and their connexion with the territorial government ceases, except in the further duty to obey its laws made in obedience to the Constitution and laws of the United States; and, in performing this *duty*, or exercising this *power* of election, however it may be termed, they are acting as the legislature acts when elected, as the agents of this Government, to assist the same in regu-

lating the affairs of the Territory until, by its population, it shall, with the authority of Congress, be entitled to its admission into the Union.

Sir, in the discussion of this measure its friends have acted upon the assumption that this bill was a grant to the people of the political power contained in it, and this assumption has led to some singular statements when discussing its details. A gentleman, in another place, is reported to have gently complained that it proceeded upon the idea of granting power to the legislature instead of a recognition of the powers *in* the legislature. Now, sir, although the wisdom of seventy years may be invoked for the propriety of that remark, I feel authorized to say that the idea involved in it is not American, and that it has not been considered as correct political doctrine in this country for two hundred years. The American doctrine, as I understand it, is that all the governmental agents, in the exercise of a legitimate authority, do so under a grant from the people, and that there can be no inherent existing rights in any department of a government, the people themselves being the sole depository of such rights, which upon their grant can be exercised only for their benefit. It would appear somewhat awkward, sir, to read in one of our constitutions that the people recognise certain powers as belonging to the House of Representatives or Senate. The language used in framing our governments is, I think, invariably, that the people *grant* the powers with which any department of government is invested. The improper use of the expression may have been suggested by the false character which has been given to the bill. It has been made to wear the appearance of a grant of power to the people of the Territory, whereas it is the reverse. It is simply a law creating a government to make needful rules and regulations for the government of a Territory for the United States. It is a machine for the General Government, created by it, sustained by it, accountable to it, and may at any moment be destroyed by it. How idle it is to talk about the non-intervention of the General Government in the domestic affairs of the Territory as a principle of this bill, when the General Government originates and sustains, and may at any time destroy every vestige of government within the Territory. And yet it is this supposed doctrine of non-intervention and popular sovereignty, that recommends the measure to whatever of northern support it obtains.

But this pretended doctrine of non-intervention is based upon the fact that the bill, after making what has been termed a *tabula rasá* of the Territory, so far as pertains to its laws, does in fact authorize the territorial government to legislate slavery into the Territory, while a great majority of its friends deny that it has the power to prohibit slavery from being introduced into the Territory. And it follows that if this last position shall be sustained by the United States court, to which all legal questions touching the subject of slavery is, by the bill, expressly referred, then this doctrine of non-intervention merely means that slavery shall be extended over this magnificent domain, already, by the solemn legislation of Congress, devoted exclusively to free men and free institutions; and northern men are called upon to give, in fact, a naked, bald vote for the extension of slavery into all the unorganized territory of the United States, embracing an extent of country sixteen times as large as the State of Ohio. To procure such a vote upon the simple question of repeal, would be impossible; and hence the catch words of non-intervention and popular sovereignty are interposed as a screen to cover a defection from northern sentiment, in the hope to reconcile the North to this surrender of free territory to slavery, by pleading in extenuation of the act, that the doctrine of popular rights demands the sacrifice.

Sir, the manly sense of the North will discover the fraud and reject the excuse. It will see that this doctrine of popular sovereignty, so constantly invoked in aid of the measure, is not of sufficient consistency to throw a shadow over the surrender which freedom is called upon to make to slavery. It will see, after all the efforts it has made to allay the agitation of the slavery question at the call of the South, the giant stride which that section is now making for political power and control, regardless of its pledged faith and solemn engagement.

The North, in my judgment, will not admit that any necessity calls for this surrender; and in answer to the demand that slavery is ameliorated by exten-

sion, will answer so is liberty also, and she will prize the blessings of freedom too high to argue the question of preference for the two conditions. She will demand the peformance of the settlement of 1820, and will support that demand with all the means in her power, consistent with the national Constitution, and if this bill passes, will leave the dishonored compromises in the hands of their violators, and see her duty in supporting, to the extent of her ability, the varied interests of the country, under the sole guide of the Federal Constitution.

Mr. Chairman, the indication of apparent changes in the votes of gentlemen since the Senate bill was taken up in the House, makes it probable that this bill, in some shape, and with its objectionable features, may become a law. But, sir, will its friends thereby have achieved a victory? My belief in the final triumph of right forbids my anticipating such a result. With the passage of this bill the contest will begin, and I firmly believe that its progress will be marked with more of slavery excitement and sectional strife than any era of our history. Yet I trust the close of the struggle will vindicate the national honor, and save the country from the stain and disgrace of having permanently broken that "PUBLIC FAITH WHICH HOLDS THE WORLD TOGETHER."